IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No.690-DB of 2004

Date of Decision : January 14, 2009

Gurdip Singh @ Baba and another .... Appellants

Vs.

State of Punjab .... Respondent

CORAM : HON'BLE MR. JUSTICE MEHTAB SINGH GILL

HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr. Sanjeev Manhas, Advocate
for the appellants.

Mr. S. S. Gill, Addl. A. G., Punjab.

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L. N. MITTAL, J. :

By this common judgment, we are disposing of **Crl. Appeal No. 690-DB of 2004**, instituted by Gurdip Singh @ Baba, Baldev Singh and Rachhpal Singh, **Crl. Appeal No. 2040-SB of 2004**, instituted by Balwinder Kaur and **Crl. Revision No. 2356 of 2004**, instituted by Balwinder Singh-complainant, as the same have arisen out of the same judgment and order dated 05.06.2004 of learned Additional Sessions Judge (Adhoc), Patiala.

Appellants of Crl. Appeal No.690-DB of 2004 stand convicted and sentenced to undergo life imprisonment and fine of Rs.5,000/- each and in default of payment of fine, to undergo further imprisonment for one year

under Section 302 of the Indian Penal Code (in short – IPC) and to undergo rigorous imprisonment for 07 years and to pay fine of Rs.1,000 each and in default of payment of fine, to undergo further rigorous imprisonment for one year under Section 120-B IPC. Balwinder Kaur-appellant of Crl. Appeal No. 2040-SB of 2004 stand convicted and sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one year under Section 120-B IPC. Harjinder Kaur-accused (respondent no.5 in Crl. Revision No.2356 of 2004) stands acquitted and the revision petition has been preferred by complainant Balwinder Singh praying that she be also convicted.

This case has a checkered version. Balwinder Singh-complainant (PW-11) is brother of Mehnga Singh (since deceased). On 26.02.1999, Balwinder Singh made statement Ex.PW-11/A to SI Gurdev Singh of Police Station Samana that on 25.02.1999, Balwinder Singh and Mehnga Singh had gone to Nasupur Peer to offer milk. Then they went to their maternal uncle. On 26.02.1999, they were returning to their village on separate scooters. The complainant was 15-20 *karams* behind the deceased. At about 04:00 A.M., a Maruti car driven by a sikh gentleman, appearing/dressed as Baba, came, being driven very rashly and negligently and after overtaking the complainant, the car hit the scooter of Mehnga Singh, who fell down and suffered injuries and died at the spot. On this statement, FIR Ex.PW-20/B was registered under Section 304-A IPC. Gurdev Singh prepared inquest report Ex.P-C on the dead body and sent it for post-mortem examination. The spot was also got photographed. From the spot, scooter bearing No.PB-42-6200, which was being driven by the deceased, and its registration certificate in the name of one Vijay Kumar, were seized vide Memos Ex.P-K and Ex.P-L. Also, a purse containing photograph of Gurdip Singh and Baldev Singh-accused was seized vide

Memo Ex.P-J.

On post-mortem examination, 10 injuries were found on the dead body. Injury no.8, resulting in fracture of underlying skull bone and sub-dural hemorrhage, was opined to be fatal and sufficient to cause death in ordinary course of nature. All the injuries were ante mortem. Injury no.8, which proved fatal, is described as under :-

> ***"8.*** *Lacerated wound 5 cm x 1 cm into bone deep over right occipital region of scalp, on dissection under lying bone was fractured."*

Probable duration between injuries and death was within few hours. Dr. Satish Arora, who conducted post-mortem examination, also opined in the witness-box that injury no.8 could be result of blow with iron rod/Sabbal and injury no.6 was possible by twisting of cord around the neck.

On 27.02.1999, Balwinder Singh-complainant made supplementary statement Ex.D-X to SI Gurdev Singh adding that on 26.02.1999, he was nervous and under shock due to death of his younger brother. In fact, after the accident took place, the offending Maruti car came back and in the meantime, Mehnga Singh had stood up. Accused Baba Gurdip Singh of Dera Shri Chand Dattal stopped the car and came out and inflicted iron rod blow on the head of Mehnga Singh, who fell down and died. The other convicts Rachhpal Singh, Baldev Singh and Balwinder Kaur were sitting in the car at that time. Motive for the occurrence was that Harjinder Kaur-accused (since acquitted), wife of Mehnga Singh-deceased, was having illicit relation with Baba Gurdip Singh, to which Mehnga Singh objected. The four convicts murdered Mehnga Singh at the instance of Harjinder Kaur. On 29.03.1999, SHO Krishan Kumar, who had taken over the investigation of the case, was present at T-point, Rethgarh. Rattan Pal Singh, Commission Agent, produced Gurdip Singh and Baldev Singh-

accused along with car No.DL-1C-2348. Both the accused were arrested and the car was seized vide Memo Ex.P-D. Rattan Pal Singh disclosed that on 28.03.1999, accused Gurdip Singh, Baldev Singh and Balwinder Kaur came to him and separately made extra-judicial confession that they, along with Rachhpal Singh-accused, had conspired to kill Mehnga Singh at the asking of Harjinder Kaur-accused and on 26.02.1999, at about 04:00 A.M., Mehnga Singh was coming on scooter, whereas these four convicts were coming in a Maruti car being driven by Gurdip Singh and they hit the car into the scooter of Mehnga Singh, who fell down and then Gurdip Singh inflicted iron rod blow on the head of Mehnga Singh, who died at the spot. Motive for the same was also disclosed that Harjinder Kaur used to come to Gurdip Singh, to which Mehnga Singh objected. On 30.03.1999, one Sukhdeep Singh produced Balwinder Kaur-accused before Krishan Kumar. She was arrested. On 31.03.1999, Gurdip Singh-accused, after making disclosure statement, got recovered an iron rod allegedly used in the occurrence.

On 16.04.1999, Surat Singh (PW-10) made statement before B. Chandrashekher, the then Superintendent of Police (HQ), Sangrur, that on 20.02.1999, he (PW-10) had gone to Dera Baba Gurdip Singh and stayed there. At about 11:30 P.M., he went to the room of Baba and saw and heard Harjinder Kaur telling Gurdip Singh that Mehnga Singh had come to know about their illicit relation and therefore, Mehnga Singh should be finished, otherwise, Mehnga Singh would kill them. Sahib Singh also made statement on 16.04.1999 that on 25.02.1999, he had gone to Nasurpur Peer to offer milk in the evening and Kehar Singh also met him. After offering milk, when they came out, all the four convicts met them. Mehnga Singh also came there on his scooter. Then Baldev Singh went on the scooter of Mehnga Singh, whereas the other three convicts and Mehnga Singh went in car No. DL-1C-2348 of Gurdip Singh. Next morning, Sahib Singh came to

know of the death Mehnga Singh.

On 18.04.1999, Balwinder Singh-complainant made statement that on 25.02.1999, at about 05:30 P.M., Mehnga Singh had gone to Nasurpur Peer to offer milk. However, when he did not return, his mother woke up Balwinder Singh in the morning on 26.02.1999 and asked him to search Mehnga Singh. Accordingly Balwinder Singh went on his scooter and after searching at the Peer, he was coming on the road at about 04:30 A.M., when in the revenue limits of Village Assarpur, he saw that Rachhpal Singh and Baldev Singh-accused were strangulating Mehnga Singh with *parna* (a piece of cloth) and Gurdip Singh throttling Mehnga Singh with hands. Balwinder Kaur was sitting in the Maruti car nearby and one scooter was also there. When Balwinder Singh tried to rescue his brother, Gurdip Singh took out pistol from the car and threatened the complainant, who went at some distance and then saw that Gurdip Singh and Baldev Singh threw Mehnga Singh on road and ran over him under the car. The complainant returned to his house and narrated the incident to his mother and also narrated it to the respectables in the Village. Motive for the occurrence was illicit relationship of Harjinder Kaur, wife of the deceased Mehnga Singh, with Gurdip Singh-accused.

On 18.04.1999, Devinder Singh stated that on 26.02.1999 at about 01:30 A.M., he reached Bhakra Canal near Hotel and found scooter of Mehnga Singh and Maruti car No.DL-1C-2348 parked there and all the four convicts were present there along with Mehnga Singh. The convicts became nervous on being asked by Devinder Singh as to where they were going. Devinder Singh went to his village and next day learnt that Mehnga Singh had died.

On completion of investigation, all the four convicts and Harjinder Kaur (since acquitted) were sent up for trial.

Charge under Sections 120-B and 302 IPC was framed against

all the five accused. They pleaded not guilty and claimed trial.

To prove its case, the prosecution examined 20 witnesses. Dr. Satish Arora (PW-1) stated about post-mortem examination of the deceased and cause of death. ASI Sakkatar Singh (PW-2) stated that on 29.03.1999, Rattan Pal Singh produced accused Gurdip Singh and Baldev Singh before SI Krishan Kumar. They came in Car No. DL-1C-2348, which was also taken into possession. Head Constable Narsi Ram (PW-3) stated that he recorded FIR Ex.P-G in Police Station Khanauri on 20.03.1999. The said FIR was lodged by Balwinder Kaur (convict herein) against the other three convicts and one Amrik Singh, under Sections 307 and 342 read with Section 34 IPC. Parshotam Kaushik (PW-4) is a photographer. He photographed the place of occurrence. The said photographs are missing from the trial court file and could not be reconstructed despite efforts. Karamjit Singh (PW-5) stated that a purse containing a photograph of accused Gurdip Singh and Baldev Singh was seized from the spot vide memo Ex.P-J. The aforesaid scooter, which the deceased was driving, was also seized from the spot vide memo Ex.P-K, whereas its registration certificate was seized vide memo Ex.P-L. ASI Raj Pal Singh (PW-6) stated that he recorded statements of some witnesses in the case and arrested accused Harjinder Kaur. Balkar Singh (PW-7) stated that he prepared scaled site plan. Rattan Pal Singh (PW-8), witness of extra judicial confession allegedly made before him by Gurdip Singh, Baldev Singh and Balwinder Kaur, has resiled from the said version and stated that he did not know the parties and that the accused had not come to him nor made any confession before him. He was declared hostile, but even in cross-examination by the Public Prosecutor, the witness denied the aforesaid prosecution version. He also denied that he produced the aforesaid two accused before the police along with their car. Devinder Singh (PW-9), Surat Singh (PW-10) and Balwinder Singh (PW-11) have broadly stated

according to the prosecution version, as stated by them before B. Chandrashekhar, Superintendent of Police (HQ), Sangrur, as already noticed herein above. Kirpal Kaur (PW-12) is sister of the deceased. She stated that about 15 days after the death of her brother Mehnga Singh, Balwinder Kaur-accused came to Harjinder Kaur-accused at the latter's house in the field and the witness overheard their conversation. Balwinder Kaur was telling Harjinder Kaur that at latter's instance, the former along with other three convicts had murdered Mehnga Singh. The witness stated that they approached the police, but were told that they would be called in case of need. She also stated that her statement was not recorded by the police. B. Chandrashekhar (PW-13) has stated that on 16.04.1999 and 18.04.1999, he had recorded statements of different witnesses, as already noticed above. Head Constable Rakesh Kumar (PW-14) and Constable Angrej Singh (PW-15) are formal witnesses. They tendered their affidavits. Ram Pal (PW-16) and Inspector Nirbhai Singh (PW-19) have stated about the case lodged on 20.03.1999 by Balwinder Kaur against the other three convicts and Amrik Singh. Inspector Manjeet Singh (PW-17) partly investigated the instant case and stated about the same. Krishan Kumar Panthey, SHO (PW-18) and SI Gurdev Singh (retired) (PW-20) stated about investigation of the case.

The accused in their statements under Section 313 of the Code of Criminal Procedure (in short – Cr.P.C.) denied all the incriminating circumstances appearing against them in prosecution evidence and claimed to be innocent. Harjinder Kaur alleged that after the death of her husband, his brothers and sister wanted to oust her from the property of her husband and they also forged a Will, but mutation has been sanctioned in favour of this accused and her children and the Will was found to be forged by the Revenue Officer. Except some documents, no other evidence was led by the accused in their defence.

Learned Additional Sessions Judge, Adhoc, Patiala vide

impugned judgment and order dated 05.06.2004, convicted and sentenced the four accused and acquitted the fifth accused Harjinder Kaur, as already noticed herein above. Feeling aggrieved, three convicts have preferred Crl. Appeal No.690-DB of 2004 and fourth convict has preferred Crl. Appeal No.2040-SB of 2004, whereas complainant Balwinder Singh has preferred Crl. Revision No. 2356 of 2004 challenging the acquittal of Harjinder Kaur.

We have heard learned counsel for the parties and perused the case file with their assistance.

Learned trial court has found the prosecution witnesses reliable and therefore convicted four of the five accused. However, on careful consideration of the material on record, we find, for the reasons to be recorded herein after, that the statements of the prosecution witnesses are not worthy of credence so as to prove the charges of conspiracy and murder. However, guilt of Gurdip Singh-accused for offence under Section 304-A IPC is proved beyond reasonable doubt.

Rattan Pal Singh (PW-8), witness of alleged extra judicial confession by Gurdip Singh, Baldev Singh and Balwinder Kaur, has turned hostile and has categorically stated that no accused came to him nor made any confession before him.

Statement of Devinder Singh (PW-9) that he had seen all the four convicts with the deceased at about 01:30 A.M. on 26.02.1999 is not reliable because he made this statement for the first time before the police on 18.04.1999 i.e. more than seven weeks after the occurrence. Presence of Devinder Singh at the said place at odd hour of the night is also highly doubtful. He being photographer, had allegedly gone to a Colour Laboratory in Patiala in connection with developing and printing work of photographs, but he had no receipt of any such Lab for getting any work done on 25.02.1999. In addition to it, the initial prosecution version is that the deceased and his brother Balwinder Singh had stayed at the house of

their maternal uncle after offering milk at the *peer* and were returning from there at about 04:00 A.M. So, the statement of Devinder Singh that he had seen all the four convicts along with the deceased at about 01:30 A.M. at the stated place, cannot be believed. Even otherwise, Sahib Singh stated during investigation that he had also seen all the four convicts and Mehnga Singh and then Baldev Singh-convict went on the scooter of Mehnga Singh, whereas the other three convicts and Mehnga Singh went in the car of Gurdip Singh. Sahib Singh has not been examined as witness during trial, but the statement of Devinder Singh (PW-9) cannot be believed in view of aforesaid statement of Sahib Singh during investigation and in view of initial version given by Balwinder Singh in the FIR and also in view of the fact that the occurrence had allegedly taken place at 04:30 A.M. as stated by Balwinder Singh in his last version and therefore, the convicts would not have kept Mehnga Singh with him for so many hours during the night, if they intended to kill him.

Statement of Surat Singh (PW-10) also cannot be believed. His version came before the police for the first time on 16.04.1999 i.e. more than 1 ½ months after the occurrence. It is not explained why he kept quite for such a long period. Moreover, according to his testimony, he had heard the conversation between Harjinder Kaur and Gurdip Singh on 20.02.1999 regarding conspiracy to kill Mehnga Singh, whereas Mehnga Singh was allegedly murdered on 26.02.1999, but the witness remained silent during the intervening six days inspite of danger to the life of Mehnga Singh. Even after the alleged murder of Mehnga Singh, the witness Surat Singh remained silent for another 1 ½ months. Moreover, such conspiracy is hatched in secrecy. However, according to Surat Singh, even the door of the room, where the conspiracy was being hatched, was not fully closed and window was also open so as to provide opportunity to the witness to peep in.

Less said the better about the statement of the star witness of

the prosecution namely Balwinder Singh (PW-11), he has come out with different versions at different stages. Initially, he lodged FIR about 5 ½ hours after the occurrence claiming to be eye-witness of the occurrence and stated that Mehnga Singh died on account of accident caused by a Maruti car being driven by a sikh gentleman, whose appearance was that of a *baba*. However, after a day, Balwinder Singh came out with a supplementary version that after the accident, Gurdip Singh-accused came out of the car and inflicted iron rod blow on the head of Mehnga Singh resulting in his death and at that time, other three convicts were sitting in the car. However, if all the four convicts were already known to Balwinder Singh, it is not explained why he did not name them in the FIR. Moreover, even if he was nervous and under shock due to death of his brother while lodging the FIR, he could not have omitted the material fact that Gurdip Singh had also inflicted iron rod blow on the head of Mehnga Singh nor the complainant would have omitted to mention the names of all the four convicts in the FIR, particularly so because the FIR was lodged after 5 ½ hours of the occurrence and during this period, the complainant could have composed himself to some extent and there could not be such material omissions in the FIR. Subsequently, the complainant came out with a completely new version on 18.04.1999. According to the original version, the complainant and the deceased had both gone together to offer milk at the *peer* and then after staying at the house of their maternal uncle, they were returning together on their separate scooters. However, according to the new version, only Mehnga Singh had gone to offer milk at the *peer* and when he did not return during night, his mother woke up the complainant in the morning to search for Mehnga Singh and thereupon Balwinder Singh went to search his brother and found that at about 04:30 A.M., accused Rachhpal Singh and Baldev Singh were strangulating Mehnga Singh with *parna* (a piece of cloth), whereas Gurdip Singh was throttling Mehnga Singh with hands and

Balwinder Kaur was sitting in the Maruti car. This completely new version saw the light of the day for the first time on 18.04.1999 i.e. more than seven weeks after the occurrence. If Balwinder Singh was eye-witness of the occurrence, which allegedly took place in the manner stated in this new version, there is no reason why Balwinder Singh would have initially lodged FIR of accident case and then on the next day, would have stated about iron rod blow being inflicted after the accident by Gurdip Singh on the head of the deceased. The statement of Balwinder Singh is completely unreliable as he has changed his version many times. Moreover, the accused would not have killed the deceased on the metalled road near bus-stop of Village Assarpur, as stated by Balwinder Singh in the new version, so as to be seen by Balwinder Singh. There was possibility of other passers-by also to see such an occurrence and the accused would not have done so. On the other hand, the deceased was allegedly with the convicts throughout the night. They would have killed him at some deserted and isolated place and not at a public road. The complainant also came out with the new version that after killing Mehnga Singh by strangulating/throttling him, his dead body was ran over underneath the car and it was repeated three times, as stated by Balwinder Singh in the witness-box, although even in his statement made to police on 18.04.1999, it was stated that the dead body was ran over only once. This version is also conflicted by medical evidence because no such crush injuries were found on post-mortem examination. If the dead body had been crushed under the car once or thrice, there would have been crush injuries, but no crush injuries were found.

Statement of Kirpal Kaur (PW-12) lacks any credence. She is sister of the deceased. She stated that she did not make any statement to police during investigation. Even if police officials of Police Station were not recording her statement, B. Chandrashekhar, Superintendent of Police (HQ), recorded statements of some witnesses, but Kirpal Kaur did not state

that she made any statement even before him. Her version came in the Court for the first time. Moreover, on 27.02.1999, the complainant in the second version, had named all the four convicts and had also stated about illicit relationship between Gurdip Singh and Harjinder Kaur-accused. In these circumstances, it is improbable that after 15 days of the occurrence, Balwinder Kaur-accused would go to Harjinder Kaur-accused and would openly talk about the murder of deceased by the four convicts at the instance of Harjinder Kaur, so as to be overheard by Kirpal Kaur, sister of the deceased.

The last version of the prosecution, as stated by Balwinder Singh in the witness-box also, is that accused Baldev Singh and Rachhpal Singh had strangulated the deceased with a piece of cloth and accused Gurdip Singh had throttled the deceased with hands. However, Dr. Satish Arora has not stated that the death was by strangulation or throttling. There were no marks of strangulation. Thus, this version of the prosecution has been falsified by medical evidence as well. Dr. Satish Arora also stated that injury no.8, which was fatal, could be result of iron rod blow. However, the complainant did not state about the iron rod blow in the witness-box and version of strangulation or throttling is not corroborated by medical evidence.

Motive for the occurrence was stated to be alleged illicit relationship between Harjinder Kaur and Gurdip Singh. However, this fact was not even put to the accused in their statements under Section 313 Cr.P.C. and therefore, cannot be used as incriminating evidence against them. Even otherwise, there is no reliable evidence about the same. Balwinder Singh has also not stated about the said relationship while appearing in the witness-box.

If Harjinder Kaur, wife of the deceased, had illicit relationship with Gurdip Singh-accused and if the deceased and other family members

knew about it and had objection to the said relationship, it sounds highly improbable that the deceased was still with all the four convicts on the fateful night for a considerable time before he was allegedly done to death by them.

For the reasons recorded herein above, we are of the considered opinion that the prosecution version regarding alleged conspiracy and murder, is completely unreliable and highly doubtful.

However, the first version of accident is very reliable. The FIR was lodged promptly stating that the accident was caused by rash and negligent driving of Maruti car by a sikh gentleman, appearing/dressed as Baba. Gurdip Singh-accused is also a Baba of a dera. Purse containing a photograph of Gurdip Singh and Baldev Singh was also seized from the spot on 26.02.1999 itself. It thus becomes manifest that Gurdip Singh, by driving the Maruti car No. DL-1C-2348 rashly and negligently, caused the accident resulting in the death of Mehnga Singh and therefore, Gurdip Singh is liable to be convicted under Section 304-A IPC. Statement of Karamjit Singh (PW-5) proves the recovery of purse along with photograph of Gurdip Singh and Baldev Singh therein from the spot. The said recovery was made on 26.02.1999 itself, even before any of the accused was named by the complainant being involved in the occurrence. The said recovery is therefore very significant to link accused Gurdip Singh @ Baba with the accident.

Learned counsel for the appellants contended that no such recovery was shown in Col. No. 23 of inquest report Ex.P-C and the said column was left blank. However, this circumstance does not create any doubt about the recovery of the purse with photograph because even scooter was lying there and it was not mentioned in Col. No. 23 of the inquest report. Karamjit Singh (PW-5) is an independent witness and recovery of the purse in his presence is proved not only from his statement but also from

the statement of SI Gurdev Singh (PW-20). The FIR regarding the accident was also lodged very promptly.

Learned counsel for the appellants contended that mechanical test of the car was not conducted. However, the car was seized more than a month after the occurrence and therefore, its mechanical test could not have served any purpose. It was also argued that it has not come in evidence as to who is owner of the aforesaid car. However, ownership of the car is not relevant to prove offence under Section 304-A IPC. Moreover, the car was seized from the possession of Gurdip Singh-accused at the time of his arrest. Omission to mention registration number of the car in the FIR is not so material in the facts and circumstances of the case.

Learned State counsel contended that Balwinder Singh in his statement made on 27.02.1999 named all the four convicts. However, Balwinder Singh, in the witness-box, denied having made this statement to the police. He also did not state in the witness-box the version contained in the said statement. So, the said statement, allegedly made to the police, cannot be used as substantive statement when its maker has disowned it.

Learned State counsel also contended that the FIR was lodged very promptly. However, the FIR was regarding the accident and the said version is being accepted by us.

For the reasons recorded herein above, we find that the prosecution has failed to prove its case for offences under Sections 302 and 120-B IPC and therefore, all the four convicts are acquitted of the said charges and acquittal of Harjinder Kaur by the trial court is also affirmed. However, accused Gurdip Singh @ Baba is convicted for offence under Section 304-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.5,000/- and in default of payment of fine, to undergo further simple imprisonment for three months. Consequently, **Crl. Appeal No. 2040-SB of 2004**, instituted by Balwinder Kaur is allowed and

she be set at liberty forthwith, if not required in any other case. **Crl. Revision No. 2356 of 2004**, instituted by Balwinder Singh-complainant, challenging the acquittal of Harjinder Kaur, is dismissed. **Crl. Appeal No. 690-DB of 2004**, instituted by Gurdip Singh @ Baba, Baldev Singh and Rachhpal Singh, is allowed qua Baldev Singh and Rachhpal Singh-appellants and they be set at liberty forthwith, if not required in any other case. The said appeal qua Gurdip Singh @ Baba is allowed partly to the extent indicated herein above and he be set at liberty forthwith if he has undergone the sentence as awarded by us and if he is not required in any other case.

(L. N. MITTAL)
JUDGE

January 14, 2009 **(MEHTAB SINGH GILL)**
monika **JUDGE**